

EXHIBIT D

From: [Patrick McGill](#)
To: [Kapaloski, Tammy](#)
Cc: [Foster, Brett](#); [Lisa Martens](#); [Martin Bader](#); NThomas@parsonsbehle.com; LButler@parsonsbehle.com
Subject: RE: Third Party Subpoenas Issued by Blendjet
Date: Thursday, December 8, 2022 5:21:33 PM

EXTERNAL FROM OUTSIDE DORSEY. BE CAUTIOUS OF LINKS AND ATTACHMENTS.

Tammy,

As you know, our previous conference related to the third party subpoenas was directed at the deposition requests, and whether Blendtec was required to file for a protective order in response to those requests. We did not discuss the document requests – or any of Blendtec’s preliminary objections thereto – in detail. Those subpoenas were then revised.

We note that we provided notice of the currently pending subpoenas on November 14, after which you were free to serve your objections to the revised document requests, but we only received your objections yesterday afternoon. Due to our schedules we are not available to both prepare and meet today or tomorrow. We are, of course, willing to meet and confer as we indicated. To this end, we are available on Monday from 9am-2pm MST, or Tuesday before 1:30pm MST. Please let us know if any of these times will work or propose others and we will do our best to accommodate your request to confer.

In the meantime, we can confirm that the subpoenas on Enlisted Ventures, MarketStar, and Mr. Dickson have been personally served (on Nov. 21, Nov. 23, and Nov. 21, respectively). The subpoena to Blendfresh was served by certified mail on November 22, but we have not yet received the return confirming receipt.

Sincerely,
Patrick

Patrick M. McGill

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From: kapaloski.tammy@dorsey.com <kapaloski.tammy@dorsey.com>

Sent: Thursday, December 8, 2022 11:20 AM

To: Patrick McGill <PMcGill@sheppardmullin.com>

Cc: foster.brett@dorsey.com; Lisa Martens <LMartens@sheppardmullin.com>; Martin Bader <MBader@sheppardmullin.com>; NThomas@parsonsbehle.com; LButler@parsonsbehle.com

Subject: RE: Third Party Subpoenas Issued by Blendjet

Hi Patrick,

As you'll see from Blendtec's objections to Blendjet's subpoenas, the objections are not so complicated that you need several days to review. To summarize, Blendjet has standing to object including because the subpoenas seek privileged communications and Blendtec holds the privilege and because Blendtec holds a proprietary interest or personal right in the documents requested. Any one of the objections provides supporting case law.

This is now the third time that I have asked for a time to meet and confer on these issues. In both of your responses you have declined to provide a date/time. We are unsympathetic to your claim that this is too complex to meet and confer on a timely basis. First, this is an issue of your creation. The magnitude of the issues were generated by you ill-advisedly preparing and serving 8 subpoenas asking for privileged information and information in the possession of Blendtec and to which Blendtec has a proprietary interest, all with deadlines for production on December 9, 2022. Second, this is the second time you have issued document subpoenas with essentially the same scope (with the exception of the Marketstar subpoena which is clearly an inadvertent copy of the D&W subpoena, your Nov. 14 subpoenas contain only very minor changes from the first set that you noticed). We met and conferred extensively on the first documents subpoenas and addressed all most all of the objections that have now been formalized. This is nothing new. Third, although there are 7 objections relating to your 8 subpoenas (the objections to the two nearly identical law firm subpoenas were combine into one objection), the grounds for all of the objections are substantially the same and very easy to wrap your arms around, particularly given that we have already met and conferred on these same issues before. You may disagree that we have standing to object, but that is a decision for the judge to make. Frankly, I'm surprised that you are delaying meeting and conferring on these issues since they are Blendjet's subpoenas; I would think that you would want to move these issues forward as quickly as possible.

In any event, we are aware that the H&H, D&W, BYU, and Blendid subpoenas were actually served on those third parties. We do not know if the subpoenas to Enlisted Ventures, MarketStar, Blendfresh, and Thomas Dickson have been served, but have reason to believe that some or all 4 of these subpoenas have not been served. Please let us know as soon as possible, and not later than by the end of today, if these 4 subpoenas have been served and, if so, the date they were served and that may take some of the issues off the table for now.

We look forward to hearing from you today regarding whether the subpoenas to Enlisted Ventures, Marketstar, Blendfresh, and Thomas Dickson have been served and, if so, when they were served.

Regards,
Tammy

From: Patrick McGill <PMcGill@sheppardmullin.com>
Sent: Wednesday, December 7, 2022 4:35 PM
To: Kapaloski, Tammy <kapaloski.tammy@dorsey.com>
Cc: Foster, Brett <foster.brett@dorsey.com>; Lisa Martens <LMartens@sheppardmullin.com>;
Martin Bader <MBader@sheppardmullin.com>; NThomas@parsonsbehle.com;
LButler@parsonsbehle.com
Subject: RE: Third Party Subpoenas Issued by Blendjet

EXTERNAL FROM OUTSIDE DORSEY. BE CAUTIOUS OF LINKS AND ATTACHMENTS.

Tammy,

Thank you for sending these documents to us for review. However, it is unreasonable for Blendtec to expect us to review all seven sets of responses and objections by tomorrow and be prepared for a productive conference. As such, please let us know when you are available at the beginning of next week. We will then check our schedules.

With thanks,
Patrick

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From: kapaloski.tammy@dorsey.com <kapaloski.tammy@dorsey.com>
Sent: Wednesday, December 7, 2022 2:52 PM
To: Patrick McGill <PMcGill@sheppardmullin.com>
Cc: foster.brett@dorsey.com; Lisa Martens <LMartens@sheppardmullin.com>; Martin Bader
<MBader@sheppardmullin.com>; NThomas@parsonsbehle.com; LButler@parsonsbehle.com
Subject: RE: Third Party Subpoenas Issued by Blendjet

Patrick,

Please see the attached responses and objections by Blendtec to the subpoenas that Blendjet issued to third parties. Case law supporting Blendtec's position is included within the attached objections. As stated, we would like to meet and confer with you regarding motions to quash and/or for a protective order that Blendtec intends to file unless the objected to requests in the subpoenas are withdrawn. Please let us know a time tomorrow when you are available to meet and confer on this issue.

Regards,

Tammy

From: Patrick McGill <PMcGill@sheppardmullin.com>

Sent: Wednesday, December 7, 2022 6:46 AM

To: Kapaloski, Tammy <kapaloski.tammy@dorsey.com>

Cc: Foster, Brett <foster.brett@dorsey.com>; Lisa Martens <LMartens@sheppardmullin.com>;
Martin Bader <MBader@sheppardmullin.com>; NThomas@parsonsbehle.com;
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Subject: RE: Third Party Subpoenas Issued by Blendjet

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Tammy,

We are willing to confer regarding any concerns that you may have. However, we are unable to assess the precise nature of Blendtec's concerns with the third party subpoenas without its objections and responses to the subpoenas in hand. To the extent that Blendtec ultimately decides to make any objections to the third party subpoenas, please serve them so that we may consider them in a concrete manner. Then, we will be able to determine whether a conference is necessary.

Additionally, please send us case law support for any of Blendtec's actual objections to the third party subpoenas, so that we may review and consider such authority. Such authority will be useful because – for example – we are confused as to how Blendtec might have standing to object to the third party document requests, or how any interest held by Blendtec (such as a “personal right or proprietary interest”) would justify non-production as such concerns are addressed by the protective order in this matter (which will to preserve the confidentiality of the documentation produced pursuant to the subpoenas).

We will look forward to receiving and considering the aforementioned materials.

Sincerely,
Patrick

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From: kapaloski.tammy@dorsey.com <kapaloski.tammy@dorsey.com>

Sent: Tuesday, December 6, 2022 7:20 PM

To: Patrick McGill <PMcGill@sheppardmullin.com>; Lisa Martens <LMartens@sheppardmullin.com>;
Martin Bader <MBader@sheppardmullin.com>; NThomas@parsonsbehle.com;

LButler@parsonsbehle.com

Cc: foster.brett@dorsey.com

Subject: Third Party Subpoenas Issued by Blendjet

Hi Patrick,

We would like to meet and confer regarding the third party subpoenas that Blendjet issued. We believe that most of the document requests in the subpoenas are improper, including because they request documents that are covered by the attorney-client privilege or another privilege (specifically the subpoenas to Dorsey & Whitney and to Holland & Hart), they request documents that are within Blendtec's possession, custody, or control and should be requested from Blendtec in the first instance, and because they request documents to which Blendtec has a personal right or proprietary interest. We will serve formal objections to the subpoenas this week. In addition, unless the parties can reach an agreement, we intend to file motions to quash and/or for a protective order. Please let us know when you are available to meet and confer with us on these issues tomorrow, Dec. 7, or Thursday, Dec. 8.

Thank you,
Tammy

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.